

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Petition by Wisconsin RSA #4 Limited)	DA 05-3159
Partnership, Wausau Cellular Telephone)	
Limited Partnership, Nsighttel Wireless,)	
LLC, Brown County MSA Cellular)	
Limited Partnership, and Wisconsin)	
RSA #10 Limited Partnership for)	
Commission Agreement in Redefining)	
the Service Areas of Rural Telephone)	
Companies in the State of Wisconsin)	
Pursuant to 47 C.F.R. Section 54.207(c))	

REPLY COMMENTS OF THE CELLCOM COMPANIES

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SUMMARY

The Petition by Wisconsin RSA #4 Limited Partnership (“RSA #4”), Wausau Cellular Telephone Limited Partnership (“Wausau”), Nsighttel Wireless, LLC (“Nsighttel”), Brown County MSA Cellular Limited Partnership (“Brown County”), and Metro Southwest PCS, LLP (“Metro SW”), and Wisconsin RSA #10 Limited Partnership (“RSA #10”) (collectively, the “Cellcom Companies”) satisfies the FCC’s rules and policies and fully takes into account the recommendations of the Federal-State Joint Board on Universal Service. The Cellcom Companies have conclusively demonstrated that the redefinition proposed by the Wisconsin Public Service Commission will preserve and advance universal service consistent with the goals of the 1996 Act. The Petition also shows that the proposed redefinition will not result in cream-skimming or undue administrative burden, and will not affect the rural carrier status of the affected companies.

CenturyTel, Inc. is alone among the affected rural ILECs in its opposition to the proposed redefinition. It has offered not a single valid reason to delay the Petition, only offering up a series of recycled arguments that have been properly rejected on numerous occasions by the FCC and many states. It makes the conclusory allegation of “cream-skimming” without even addressing the solid population density analysis presented in the Petition. Instead, it ignores the data and makes another desperate run at using its own past failure to disaggregate support as a blocking tactic. CenturyTel also raises the dubious assertion that carriers should be forced to use resale to serve entire study areas, even though the idea has been rejected by the FCC and every state in which it has been considered. Finally, CenturyTel predictably asks the FCC to issue a written order, even though it cannot cite a single example where such an order has been found

necessary, and makes no attempt to distinguish this Petition from others that have recently been granted without a written order or proceeding.

For all the above reasons, the Cellcom Companies urge the Commission to reject CenturyTel's arguments once again, and to allow the proposed redefinition to become effective without further action.

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Wisconsin RSA #4 Limited Partnership (“RSA #4”), Wausau Cellular Telephone Limited Partnership (“Wausau”), Nsighttel Wireless, LLC (“Nsighttel”), Brown County MSA Cellular Limited Partnership (“Brown County”), and Metro Southwest PCS, LLP (“Metro SW”), and Wisconsin RSA #10 Limited Partnership (“RSA #10”) (collectively, the “Cellcom Companies”), hereby reply to comments submitted by CenturyTel, Inc. (“CenturyTel”) regarding the Cellcom Companies’ petition for concurrence with the Wisconsin Public Service Commission’s (“WPSC”) redefinition of several rural incumbent local exchange carrier (“ILEC”) service areas pursuant to Section 54.207(c) of the FCC’s rules (“Petition”).

I. INTRODUCTION

Over the past five years, the service areas of at least twenty CenturyTel companies have been redefined by the FCC and nine states, including Wisconsin, often over CenturyTel’s

objections.¹ After its repeated failure to make a persuasive case against redefinition, CenturyTel could have attempted to raise new arguments, or to proffer facts that might distinguish this Petition from those that were previously granted. Alternatively, it could simply have acquiesced to the requested redefinition out of respect for the WPSC's wishes and in recognition of the fact that the Petition complies with the FCC's rules and the Joint Board's recommendations. Indeed, the five other rural ILECs affected by the Petition all refrained from comment.

Instead, CenturyTel opposed this Petition by rehashing the same arguments it has made unsuccessfully, time and time again. As in many past cases, CenturyTel's arguments have little or nothing to do with the merits of redefinition. They provide no evidence that the proposed redefinition does not fully take the Joint Board's recommendations into account, or that any party would be harmed. CenturyTel's arguments must once again be rejected, and the requested redefinition should be permitted to take effect without further action.

II. DISCUSSION

A. The Petition Demonstrates That There Is No Significant Risk of Cream-Skimming, a Fact CenturyTel Does Not Seriously Attempt to Refute.

Using the framework established by the FCC in *Virginia Cellular*² and in the *ETC Report and Order*,³ the Cellcom Companies' Petition made it clear that the proposed redefinition does not present any significant cream-skimming risk. It emphasized that even unintentional cream-skimming opportunities are minimized. Two of the affected rural ILECs have elected to disaggregate high-cost support to more than one zone within each the wire-center so that costs

¹ The FCC's concurrence with the Colorado Public Utilities Commission's proposal to redefine the service area of CenturyTel of Eagle, Inc., apparently is subject to Commission review or reconsideration. However, the redefinition remains in effect as of this date.

² *Virginia Cellular, LLC*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular*")

³ *Federal-State Joint Board on Universal Service. Report & Order*, 20 FCC Rcd 6371 (2005) ("*ETC Report and Order*").

are more accurately targeted to relatively high- and low-cost portions of their study areas.⁴ Thus, it matters not where the Cellcom Companies are designated within those carriers' study areas: if they serve only the lower-cost wire centers, they will receive lower levels of support; if they serve only the higher-cost wire centers, they receive higher levels of support. Additionally, the Petition demonstrated, through the use of population density calculations consistent with *Virginia Cellular* and subsequent orders, that the Cellcom Companies' designated ETC service area does not cover solely, or even primarily, the more densely populated wire centers of CenturyTel or any other affected rural ILEC.⁵

CenturyTel makes no serious attempt at refuting the cream-skimming analysis set forth in the Petition. Nowhere does CenturyTel suggest that the Cellcom Companies are proposing to serve primarily low-cost portions of their study areas to the exclusion of high-cost areas. Nor does CenturyTel attempt to distinguish the population density analysis in the Petition from those in other Petitions with which the FCC has concurred. Nor does CenturyTel propose an alternative to population density as a determinant of relative cost. Nor, finally, does CenturyTel explain how cream-skimming could possibly occur in its service territories, given that 29 competitive ETCs⁶ serve consumers in various portions – most likely the majority if not the entirety – of the five affected CenturyTel study areas, ensuring that there is competition everywhere and not just in selected wire centers.

In sum, CenturyTel has placed no record evidence into this proceeding to challenge the analysis set forth in the Petition demonstrating that there is no significant risk of cream-skimming. For this reason alone, the FCC should grant the Petition without further action.

⁴ Petition at p. 9 n.29.

⁵ *Id.* at pp. 9-10 and Exh. H.

B. CenturyTel's Arguments Concerning Its Own Failure to Disaggregate Support Must Again Be Rejected.

Regrettably, CenturyTel continues to use its own poor disaggregation choices in an attempt to block a request for FCC concurrence with a state's reasoned decision to redefine a rural ILEC service area. CenturyTel offers nothing new here, and its misuse of the disaggregation process must once again be rejected.

When it adopted its disaggregation rules, the FCC made it clear that the Path One option – no disaggregation – was only for “those instances where a carrier determines that, given the demographics, cost characteristics, and location of its service territory, and the lack of a realistic prospect of competition, disaggregation is not economically rational.”⁷ CenturyTel offers no explanation for its decision against disaggregating its support in Wisconsin in spite of the procedural simplicity of doing so. It cannot be “lack of a realistic prospect of competition”—CenturyTel has had competitive ETCs or competitive ETC applicants in many portions of its Wisconsin service territory for years now. Given that CenturyTel has disaggregated support in other states, including Michigan, Colorado, and Washington, CenturyTel cannot argue that it could not do so here.

CenturyTel makes the remarkable request that the FCC “allow” it to explore disaggregation before the requested redefinition is granted.⁸ This argument may have been somewhat plausible when CenturyTel raised it in its (unsuccessful) opposition to the redefinition

⁶ See CenturyTel Comments at pp. 4-5

⁷ *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 11244, 11303 (2001) (“*Fourteenth Report and Order*”).

⁸ CenturyTel Comments at p. 5.

of its New Mexico service area in April 2002.⁹ Now, however, the argument is a bit stale: CenturyTel has had the ability to propose a plan of disaggregation to the WPSC for more than three and a half years.¹⁰ If CenturyTel believes that further disaggregation is in its interest, it should move forward in an appropriate proceeding rather than obstructing the Cellcom Companies' request for concurrence. It is simply not credible for CenturyTel to now suggest that this proceeding should be delayed while it decides whether to apportion its high-cost support more accurately.

Nor is there any assurance that CenturyTel would not simply use disaggregation as a tool to dig in its heels further, given its attempt to pervert the disaggregation rules so as to impede competition in other states. In its comments in opposition to a redefinition proposal by the Oregon Public Utilities Commission in 2004, CenturyTel all but confessed to using this tactic:

Although CenturyTel was able to calculate relative cost down to the exchange, which in the case of Oregon is the wire center, support was established based on two support zones – not 55.¹¹

It is disingenuous for CenturyTel to use its past disaggregation choices as a means of blocking concurrence with the state's decision to redefine its service areas, particularly in light of CenturyTel's failure to demonstrate any risk of cream-skimming. Accordingly, CenturyTel's disaggregation argument must again be rejected.

⁹ Federal-State Joint Board on Universal Service, Petition for Agreement with Change in Definition of Service Area of CenturyTel of the Southwest, Inc. in the State of New Mexico, CC Docket No. 96-45, Comments of CenturyTel, Inc. (filed April 4, 2002) at pp 10-12.

¹⁰ See 47 C.F.R. Section 54.315 (b)(4), which permits a carrier that has chosen Path 1 disaggregation to submit an alternative plan to the state Commission following May 15, 2002.

¹¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Petition for FCC Agreement in Redefining the Service Areas of Rural Telephone Companies in the State of Oregon, Comments of CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc. (filed July 26, 2004) at p. 4.

C. CenturyTel Confuses the Federal-State Service Area Redefinition Process Under Section 214(e)(5) with the State’s “Public Interest” Determination Under Section 214(e)(2).

CenturyTel demonstrates its fundamental misunderstanding of the service area redefinition process by essentially inviting the FCC to review the grounds on which the WPSC based its finding that designating the Cellcom Companies as ETCs would serve the public interest.¹² The “public interest” ramifications of designating the Cellcom Companies throughout their requested service areas have already been determined with finality by the WPSC pursuant to Section 214(e)(2), which gives the WPSC exclusive jurisdiction over requests for ETC designation. Specifically, when the Cellcom Companies were designated, it was determined that their designation would serve the public interest¹³ and that, for the areas subject to redefinition, each company should be granted such status conditionally pending the FCC’s concurrence with the redefinition of those areas.¹⁴

The WPSC properly resolved the public interest question in determining the Cellcom Companies’ eligibility for ETC status under Section 214(e)(2), and the instant Petition is governed by a very different set of legal requirements. Service area redefinition under Section 214(e)(5) does not contain requirement that the public interest be served by redefinition, nor does it provide an opportunity for opponents to “appeal” a state’s public interest finding to the FCC. Indeed, Section 214(e)(5) does not contain the words “public interest”. Rather, the only requirement under that section is that the FCC and the states take into account the recommendations of the Joint Board.

¹² See CenturyTel Comments at pp. 6-7.

¹³ See, e.g., Wausau Order at p. 9.

¹⁴ See *id.* at p. 10.

Thus, the FCC's role is to decide whether the state commission has shown that it properly considered the Joint Board's recommendations, and to grant its concurrence unless there are circumstances suggesting that the state commission's decision is inconsistent with Section 214(e)(5) and the Joint Board's recommendations. As demonstrated *supra*, CenturyTel has failed to demonstrate that the Joint Board's recommendations were not properly addressed in the Petition, or that such circumstances are present.

By conflating the provisions of Sections 214(e)(2) and 214(e)(5), CenturyTel inappropriately seeks to blur the explicit statutory distinctions between federal and state authority contained in the Act. The FCC should reject CenturyTel's attempt to invent a "public interest" appeal process for redefinition where the statute provides none.

D. CenturyTel's Resale Argument Is Without Merit.

CenturyTel's suggestion that competitive ETCs should be forced to provide service via resale is, again, aimed at the grant of ETC status to Cellcom – it is not an issue that is appropriate for this proceeding. CenturyTel essentially asks this Commission to ignore the WPSC's decision and try the case again.

Even if the argument is considered, it is without merit and completely misapprehends the purpose of permitting ETCs to serve through a combination of facilities-based and resold service. Generally, a wireless carrier can obtain small contour extensions from its neighbors or resell in an area near its existing facilities to respond to customer requests. Thus, use of resale is both practicable and desirable to cover small portions of rural ILEC wire centers or to fill in dead spots that cannot be reached by existing facilities.

However, committing to resell throughout large areas where a carrier does not have a license would serve no rational purpose, and we are unaware of any state or the FCC ever having imposed such a requirement. When resale is used to fill in small areas facilities cannot reach, the

carrier has every incentive to migrate them to a facilities-based service whenever possible, because a competitor receives no support for resold service. By contrast, in areas halfway across the state where a competitive carrier has no license or facilities, resale provides no consumer benefit, and the carrier has no way to either migrate customers to its own network or control the service quality being provided by the carrier actually providing the service. These are some of the reasons why the Congress, the Joint Board, and the FCC have never ruled that competitors must serve throughout an entire ILEC study area, especially where it is diverse and contains non-contiguous areas.¹⁵

E. CenturyTel's Calls for a Written Decision Have No Legal or Factual Basis.

CenturyTel repeats its shopworn argument that the FCC needs to issue an order to provide "documentation" that it has considered all relevant issues.¹⁶ Nowhere does the statute mention any requirement that the FCC issue written orders, decisions, findings of fact or

¹⁵ See, e.g., NPI-Omnipoint Wireless, LLC, Case No. U-13714 (Mich. PSC, Aug. 26, 2003) (FCC concurrence granted Feb. 1, 2005) ("NPI-Omnipoint Order"); Highland Cellular, Inc., Case No. 02-1453-T-PC, Recommended Decision (W.V. PSC Sept. 15, 2003), *aff'd* by Final Order Aug. 27, 2004 (FCC concurrence granted Jan. 24, 2005) ("Highland W.V. Order"); RCC Minnesota, Inc. and Wireless Alliance, L.L.C. d/b/a UniceL, TC03-193 (S.D. PUC, June 6, 2005) (FCC concurrence granted Nov. 14, 2005) ("RCC South Dakota Order"); Cellular Mobile Systems of St. Cloud, Docket No. PT6201/M-03-1618 (Minn. PUC, May 16, 2004) (FCC concurrence granted Oct. 7, 2004) ("CMS Minnesota Order"); United States Cellular Corp., Docket 1084 (Oregon PUC, June 24, 2004) (FCC concurrence granted Oct. 11, 2004) ("USCC Oregon Order"); Smith Bagley, Inc., Docket No. T-02556A-99-0207 (Ariz. Corp. Comm'n Dec. 15, 2000) (FCC concurrence granted May 16 and July 1, 2001) ("SBI Arizona Order"); Smith Bagley, Inc., Utility Case No. 3026, Recommended Decision of the Hearing Examiner and Certification of Stipulation (N.M. Pub. Reg. Comm'n Aug. 14, 2001, adopted by Final Order (Feb. 19, 2002) (FCC concurrence granted June 11, 2002) ("SBI N.M. Order"); RCC Minnesota, Inc., Docket No. 04-RCCT-338-ETC (Kansas Corp. Comm'n, Sept. 30, 2004) (FCC concurrence granted May 23, 2005) ("RCC Kansas Order"); RCC Minnesota, Inc. et al., Docket No. 2002-344 (Maine PUC May 13, 2003) (FCC concurrence granted March 17, 2005) ("RCC Maine Order"); Northwest Dakota Cellular of North Dakota Limited Partnership d/b/a Verizon Wireless et al., Case No. PU-1226-03-597 et al. (N.D. PSC, Feb. 25, 2004) (FCC concurrence pending) ("Northwest Dakota Order"); In the Matter of the Application of N.E. Colorado Cellular, Inc., to Re-define the Service Area of Eastern Slope Rural Telephone Association, Inc.; Great Plains Communications, Inc.; Plains Cooperative Telephone Association, Inc.; and Sunflower Telephone Co., Inc., Docket No. 02A-444T (ALJ, May 23, 2003), *aff'd* by Colo. PUC Oct. 2, 2003 (FCC concurrence granted May 23, 2005) ("Colorado Redefinition Order"). See also *Public Notice, Smith Bagley, Inc. Petitions for Agreement to Redefine the Service Areas of Navajo Communications Company, Citizens Communications Company of the White Mountains, and CenturyTel of the Southwest, Inc. On Tribal Lands Within the State of Arizona*, DA 01-409 (rel. Feb. 15, 2002) (FCC concurrence granted May 16, 2002); *Washington Redefinition Order*, *supra*, 15 FCC Rcd at 9927-28.

¹⁶ See CenturyTel Comments at pp. 3-4.

conclusions of law. Nor does the statute provide that the FCC must provide “evidence” that it took the Joint Board’s recommendations into consideration.

Consistent with the plain language of Section 214(e)(5), the FCC’s redefinition rules do not require a full-blown proceeding or a written order.¹⁷ By allowing the redefinition to take effect automatically if no action is taken within 90 days, the rule ensures that competition will not be unduly delayed by lengthy proceedings unless absolutely necessary. On multiple occasions, the Commission has utilized this procedure to consider requests for concurrence with proposed rural ILEC service area redefinitions, granting its concurrence and allowing the redefinition to take effect without taking action. Although CenturyTel asserts that the FCC’s “more recent practice” is to hold up redefinition by opening a proceeding,¹⁸ it fails to cite any recent examples of this occurring. In the time since the most “recent” case CenturyTel cites, the FCC has allowed several state redefinition proposals to become effective without a proceeding or written order.¹⁹

In sum, CenturyTel’s claimed need for a written order is without merit and should be rejected.

III. CONCLUSION

The redefinition requested in the Petition is identical in all material respects as that granted by the FCC and state commissions to numerous other carriers throughout the country, and the FCC is well within its authority to grant its prompt concurrence. No party has seriously

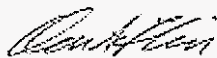
¹⁷ See 47 C.F.R. Section 54.207(c).

¹⁸ CenturyTel Comments at p. 3.

¹⁹ See, e.g., *Public Notice*, DA 05-2289 (rel. Aug. 16, 2005); *Public Notice*, DA 05-464 (rel. Feb. 22, 2005); *Public Notice*, DA 05-469 (rel. Feb. 22, 2005); *Public Notice*, DA 05-470 (rel. Feb. 22, 2005); *Public Notice*, DA 04-3801 (rel. Dec. 1, 2004); *Public Notice*, DA 04-3506 (rel. Nov. 3, 2004). Each of these became effective in 2005 by operation of the FCC’s rules.

refuted the Petition's demonstration that the proposed redefinition satisfies the FCC's rules and policies and fully takes the Joint Board's recommendations into account. The sole commenter utterly failed to refute the solid cream-skimming analysis set forth in the Petition, choosing instead to recycle old arguments that bear little relation to the merits of redefinition – arguments that have been rejected again and again, and for good reason. Because no party has provided any reason to distinguish this Petition from those that were granted without an order or a proceeding, a delay in this case would serve no purpose except to forestall competitive entry, to the detriment of consumers and contrary to the intent of the WPSC. Accordingly, the Cellcom Companies request that the Commission grant its concurrence with the WPSC's decision to redefine the rural ILEC service areas as requested in the Petition.

Respectfully submitted,



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January 6, 2006

CERTIFICATE OF SERVICE

I, Donna L. Brown, hereby certify that I have, on this 6th day of January, 2006, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing **REPLY COMMENTS OF THE CELLCOM COMPANIES** filed today to the following:

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